

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

DENISE PRECHEL,

Plaintiff,

Case No: 21-cv-12388
HON.
MAG. JUDGE

v

WALMART, INC. d/b/a SAM'S CLUB, a Foreign
Profit Corporation, WALMART STORES, INC., a
Foreign Profit Corporation and SAM'S CLUB, a
Foreign Profit Corporation,

Defendants.

FRANCI B. SILVER (P41166)
LEE STEINBERG LAW FIRM
Attorney for Plaintiff
29777 Telegraph Road - Suite 1555
Southfield, MI 48034
(248) 352-7777
(248) 352-6254 - fax
franci@leefree.net

AUDREY J. FORBUSH (P41744)
ROCHELLE L. CLARKE (P79054)
PLUNKETT COONEY
Attorneys for Defendants
Plaza One Financial Center
111 E. Court Street - Suite 1B
Flint, MI 48502
(810) 342-7014
(810) 342-7020
aforbush@plunkettcooney.com
rclarke@plunkettcooney.com

**NOTICE OF REMOVAL OF CAUSE TO THE
UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION**

NOW COMES Defendant, WALMART, INC., misidentified herein as SAM'S
CLUB, and WALMART STORES, INC., by and through its attorneys, PLUNKETT
COONEY, by and through their attorneys, PLUNKETT COONEY, and pursuant to

28 U.S.C. §§ 1332, 1441, and 1446, hereby notify this Honorable Court of the removal of this action for the following reasons:

1. On or about August 25, 2021, Plaintiff filed a lawsuit which is now pending in the Circuit Court for the County of Macomb, State of Michigan, bearing Case No.: 2021-003198-NO.

2. Defendant Walmart, Inc. was served with the Summons and Complaint via Certified Mail on or about September 9, 2021.

3. This action is a suit at common law of a civil nature, as alleged in Plaintiff's Complaint, brought by Plaintiff, Denise Prechel, against Defendant Walmart, Inc., misidentified as Sam's Club and Walmart Stores, Inc., for negligence and premises liability, in which Plaintiff seeks monetary damages.

4. This action involves a controversy which is wholly between citizens of different states. Plaintiff commenced this action in the County of Macomb, and is a resident of the State of Michigan. Defendant, Walmart, Inc. is a corporation incorporated under the laws of the State of Delaware, with its principal place of business in Arkansas. Walmart Stores, Inc. is a corporation incorporated under the laws of the State of Delaware, with its principal place of business in Arkansas. A search of the LARA Corporations Filings revealed no entity by the name of "Sam's Club." Accordingly, there is complete diversity.

5. This action filed by Plaintiff against Defendants is one involving complete diversity of citizenship under 28 U.S.C. § 1332(a).

6. This action is one over which the District Courts of the United States are given original jurisdiction.

7. The time in which Defendants are required to file this Notice of Removal to Federal Court has not yet expired.

8. Pursuant to Plaintiff's Complaint, Plaintiff seeks to recover damages in excess of \$25,000.00 exclusive of costs, interest and attorney fees in this matter, and further alleges that Plaintiff sustained numerous and serious injuries to her person. Defendants assert that, more likely than not, the amount in controversy exceeds the jurisdictional requirements of 28 U.S.C. § 1332(a) if Plaintiff prevails on her claims, which include "serious injuries." Plaintiff also claims to have incurred and will incur in the future, extensive medical, surgical, hospital and doctor bills. Plaintiff further claims that the alleged negligence of Defendants did aggravate, accelerate and/or precipitate such previous condition, including a latent condition. Plaintiff also claims that she will be unable to participate in the usual activities of life indulged in prior to said accident.

9. Under 28 U.S.C. § 1441 *et seq.*, Defendants are entitled to remove this action to the United States District Court for the Eastern District of

Michigan, since the district court would have had original jurisdiction over Plaintiff's claims. Attached to this Notice of Removal is a copy of the Complaint setting forth Plaintiff's claims for relief, as well as Defendants' Answer to Complaint, Affirmative Defenses and Reliance Upon Jury Demand. A written Notice of the Filing of this Removal has been given to all parties as required by law and is attached hereto.

10. A true and correct copy of this Notice of Filing Removal and Notice of Removal has been filed with the Clerk of the Court of the County of Macomb, State of Michigan, as provided by law.

WHEREFORE Defendants respectfully requests that it be allowed to effect removal of this action.

Respectfully submitted,

/s/ Rochelle L. Clarke
AUDREY J. FORBUSH (P41744)
ROCHELLE L. CLARKE (P79054)
PLUNKETT COONEY
Attorneys for Defendant
Plaza One Financial Center
111 E. Court Street - Suite 1B
Flint, MI 48502
(810) 342-7014
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aforbush@plunkettcooney.com
rclarke@plunkettcooney.com

Date: October 8, 2021

PROOF OF SERVICE

KIMBERLY WEBSTER certifies that on the 8th day of October, 2021, she caused to be served a copy of NOTICE OF REMOVAL OF CAUSE TO THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION and PROOF OF SERVICE via CM/ECF electronic filing with the United States District Court for the Eastern District of Michigan, Southern Division, and via email and U.S. Mail, upon:

FRANCI B. SILVER, ESQ.
LEE STEINBERG LAW FIRM
29777 Telegraph Road - Suite 1555
Southfield, MI 48034

/s/ Kimberly Webster
KIMBERLY WEBSTER

Open.13046.14527.27304583-1

Summons and Complaint



**Service of Process
Transmittal**

09/09/2021

CT Log Number 540215712

TO: Kim Lundy- Email
Walmart Inc.
702 SW 8TH ST
BENTONVILLE, AR 72716-6209

RE: Process Served in Michigan

FOR: WALMART INC. (Domestic State: DE)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: Re: Prechel Denise // To: WALMART INC.
Name discrepancy noted.

DOCUMENT(S) SERVED: Letter, Summons, Proof(s) of Service, Complaint, Demand

COURT/AGENCY: 16th Circuit Court - Macomb County, MI
Case # 21003198NO

NATURE OF ACTION: Personal Injury - Failure to Maintain Premises in a Safe Condition - 09/14/2018 -
45600 Utica Park Blvd., in the City of Utica, County of Macomb, State of Michigan

ON WHOM PROCESS WAS SERVED: The Corporation Company, Plymouth, MI

DATE AND HOUR OF SERVICE: By Certified Mail on 09/09/2021 postmarked on 09/07/2021

JURISDICTION SERVED : Michigan

APPEARANCE OR ANSWER DUE: Within 28 days

ATTORNEY(S) / SENDER(S): Franci B. Silver
Lee Steinberg Law Firm
29777 Telegraph Road, Ste. 1555
Southfield, MI 48034
248-352-7777

ACTION ITEMS: CT has retained the current log, Retain Date: 09/10/2021, Expected Purge Date:
09/15/2021

Image SOP

REGISTERED AGENT ADDRESS: The Corporation Company
40600 Ann Arbor Road E
Suite 201
Plymouth, MI 48170
877-564-7529
MajorAccountTeam2@wolterskluwer.com

The information contained in this Transmittal is provided by CT for quick reference only. It does not constitute a legal opinion, and should not otherwise be relied on, as to the nature of action, the amount of damages, the answer date, or any other information contained in the included documents. The recipient(s) of this form is responsible for reviewing and interpreting the included documents and taking appropriate action, including consulting with its legal and other advisors as necessary. CT disclaims all liability for the information contained in this form, including for any omissions or inaccuracies that may be contained therein.

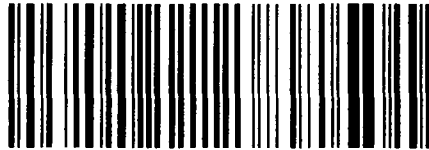
steinberglawfirm

1-800-LEE-FREE

Personal Injury Lawyers

29777 Telegraph Rd.
Suite 1555
Southfield, MI 48034

CERTIFIED MAIL®



7018 1830 0001 7866 0493



02 1P

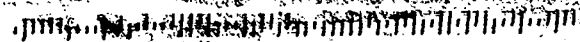
\$ 007.53⁰

0001883079 SEP 07 2021

MAILED FROM ZIP CODE 48034

Walmart, Inc., d/b/a Sam's Club
R/A The Corporation Company
40600 Ann Arbor Rd., E., Ste. 201
Plymouth, MI 48170

4817034675 C021



Lee B. Steinberg*
Brian M. Bez**
Franci B. Silver
Michael G. Simon
Debra A. Garlinghouse
Eric S. Steinberg
Rita N. Shoka
Christopher J. Gatz
Rebecca H. Filiatraut
Robert M. Cleary
Alison P. Van Hoof

leesteinberglawfirm
1-800-LEE-FREE
Personal Injury Lawyers

29777 Telegraph Road
Suite 1555
Southfield, MI 48034
Tel: (800) 533-3733
Fax: (248) 352-6254

Offices: Flint, Saginaw
and Southfield
www.1800leefree.com

Sheldon D. Ertich, Of Counsel

* Also admitted to Texas and Wisconsin

** Also admitted to Florida

September 7, 2021
Via Certified Mail Return Receipt

Walmart, Inc., d/b/a Sam's Club
R/A The Corporation Company
40600 Ann Arbor Rd., E., Ste. 201
Plymouth, MI 48170

Re: Denise Prechel vs. Sam's Club, et al.
Case No.: 21-003198-NO

Dear Sir/Madam:

Enclosed, you will find a Summons and Complaint and Demand for Trial by Jury filed against Walmart, Inc., d/b/a Sam's Club regarding injuries sustained to my client, Denise Prechel, relative to the above captioned matter. Please turn these documents over to your legal counsel for immediate handling.

Thank you for your cooperation in this regard.

Very truly yours,

LAW OFFICES OF LEE B. STEINBERG, P.C.



FRANCI B. SILVER

FBS/klh
Enclosure

Approved, SCAO

Original - Court
1st copy - Defendant2nd copy - Plaintiff
3rd copy - Return

STATE OF MICHIGAN JUDICIAL DISTRICT JUDICIAL CIRCUIT COUNTY PROBATE 16th	SUMMONS	CASE NO. 21- <u>003198</u> -NO
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Court address

40 N. Main Street, Mt. Clemens, MI 48043

Court telephone no.

586-469-5351

Plaintiff's name(s), address(es), and telephone no(s).

DENISE PRECHEL

Defendant's name(s), address(es), and telephone no(s).

WALMART, INC., d/b/a SAM'S CLUB, a Foreign Profit Corporation

v

Plaintiff's attorney, bar no., address, and telephone no.

 FRANCI B. SILVER (P41166)
 Lee Steinberg Law Firm
 29777 Telegraph Road, Ste. 1555
 Southfield, MI 48034
 (248) 352-7777

Instructions: Check the items below that apply to you and provide any required information. Submit this form to the court clerk along with your complaint and, if necessary, a case inventory addendum (form MC 21). The summons section will be completed by the court clerk.

Domestic Relations Case

- ☐ There are no pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint.
- ☐ There is one or more pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint. Attached is a completed case inventory (form MC 21) listing those cases.
- ☐ It is unknown if there are pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint.

Civil Case

- ☐ This is a business case in which all or part of the action includes a business or commercial dispute under MCL 600.8035.
- ☒ MDHHS and a contracted health plan may have a right to recover expenses in this case. I certify that notice and a copy of the complaint will be provided to MDHHS and (if applicable) the contracted health plan in accordance with MCL 400.106(4).
- ☒ There is no other pending or resolved civil action arising out of the same transaction or occurrence as alleged in the complaint.
- ☐ A civil action between these parties or other parties arising out of the transaction or occurrence alleged in the complaint has

 been previously filed in ☐ this court, ☐ _____ Court, where

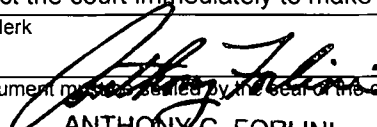
it was given case number _____ and assigned to Judge _____

 The action ☐ remains ☐ is no longer pending.

Summons section completed by Court Clerk

SUMMONS
NOTICE TO THE DEFENDANT: In the name of the people of the State of Michigan you are notified:

1. You are being sued.
2. **YOU HAVE 21 DAYS** after receiving this summons and a copy of the complaint to **file a written answer with the court** and serve a copy on the other party or **take other lawful action with the court** (28 days if you were served by mail or you were served outside this state).
3. If you do not answer or take other action within the time allowed, judgment may be entered against you for the relief demanded in the complaint.
4. If you require special accommodations to use the court because of a disability or if you require a foreign language interpreter to help you fully participate in court proceedings, please contact the court immediately to make arrangements.

Issue date <u>8/30/2021</u>	Expiration date* <u>11/29/2021</u>	Court clerk 
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*This summons is invalid unless served on or before its expiration date. This document must be sealed by the seal of the court.

SUMMONS

Case No. 21-

PROOF OF SERVICE

TO PROCESS SERVER: You are to serve the summons and complaint not later than 91 days from the date of filing or the date of expiration on the order for second summons. You must make and file your return with the court clerk. If you are unable to complete service you must return this original and all copies to the court clerk.

CERTIFICATE / AFFIDAVIT OF SERVICE / NONSERVICE☐ **OFFICER CERTIFICATE**

OR

☐ **AFFIDAVIT OF PROCESS SERVER**

I certify that I am a sheriff, deputy sheriff, bailiff, appointed court officer, or attorney for a party (MCR 2.104[A][2]), and that: (notarization not required)

Being first duly sworn, I state that I am a legally competent adult who is not a party or an officer of a corporate party, and that: (notarization required)

- ☐ I served personally a copy of the summons and complaint.
☐ I served by registered or certified mail (copy of return receipt attached) a copy of the summons and complaint, together with _____

List all documents served with the summons and complaint

_____ on the defendant(s):

Defendant's name	Complete address(es) of service	Day, date, time

- ☐ I have personally attempted to serve the summons and complaint, together with any attachments, on the following defendant(s) and have been unable to complete service.

Defendant's name	Complete address(es) of service	Day, date, time

I declare under the penalties of perjury that this proof of service has been examined by me and that its contents are true to the best of my information, knowledge, and belief.

Service fee	Miles traveled	Fee	
\$		\$	
Incorrect address fee	Miles traveled	Fee	TOTAL FEE
\$		\$	\$

Signature _____

Name (type or print) _____

Title _____

Subscribed and sworn to before me on _____, _____ County, Michigan.
 Date

My commission expires: _____ Signature: _____
 Date Deputy court clerk/Notary public

Notary public, State of Michigan, County of _____

ACKNOWLEDGMENT OF SERVICE

I acknowledge that I have received service of the summons and complaint, together with _____
 Attachments

_____ on _____
 Day, date, time

Signature _____ on behalf of _____

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF MACOMB

DENISE PRECHEL,

Plaintiff,

vs.

Case No. 21- **003198** -NO

Hon. **JOSEPH TOLA**

WALMART, INC. d/b/a SAM'S CLUB, a Foreign
Profit Corporation, WALMART STORES, INC., a
Foreign Profit Corporation and SAM'S CLUB, a
Foreign Profit Corporation,

Defendants.

FRANCI B. SILVER (P41166)
Lee Steinberg Law Firm
Attorney for Plaintiff
29777 Telegraph Rd., Suite 1555
Southfield, MI 48034
(248) 352-7777 / Fax: (248) 352-6254
franci@leefree.net

RECEIVED

AUG 30 2021

ANTHONY J. FORNINI
MICHIGAN COURT CLERK

There is no other pending or resolved civil action rising out of the transaction or occurrence
alleged in this complaint.

COMPLAINT

NOW COMES the Plaintiff, DENISE PRECHEL, by and through her attorneys, LAW
OFFICES OF LEE B. STEINBERG, P.C., by FRANCI B. SILVER, and for her Complaint against
the Defendants, WALMART, INC., d/b/a SAM'S CLUB, WALMART STORES, INC. and
SAM'S CLUB, states as follows:

1. That the Plaintiff, DENISE PRECHEL, is currently a resident of the City of
Macomb, County of Macomb, State of Michigan.
2. That the Defendant, WALMART, INC., d/b/a, SAM'S CLUB, a Foreign Profit
Corporation, is duly licensed and authorized to conduct business in the City of Utica, County of
Macomb, State of Michigan.

3. That the Defendant, WALMART STORES, INC., a Foreign Profit Corporation, is duly licensed and authorized to conduct business in the City of Utica, County of Macomb, State of Michigan.

4. That the Defendant, SAM'S CLUB, a Foreign Profit Corporation, is duly licensed and authorized to conduct business in the City of Utica, County of Macomb, State of Michigan.

5. That the amount in controversy is in excess of Twenty-Five Thousand (\$25,000.00) Dollars, and is within the jurisdiction of this Court.

6. That on or about September 14, 2018, the Plaintiff, DENISE PRECHEL was a business invitee on the premises of the Defendants, WALMART, INC., d/b/a SAM'S CLUB, WALMART STORES, INC. and SAM'S CLUB located at 45600 Utica Park Blvd., in the City of Utica, County of Macomb, State of Michigan.

7. That Plaintiff, DENISE PRECHEL, was shopping for a desk chair at Defendants' store when an employee of the store directed her to a particular aisle and location in the aisle to see one. He then pulled it out from under a shelf and directed her to sit in a chair to try it, when, all of a sudden as she sat in the chair, the chair went backward and then forward, causing Plaintiff to sustain serious injuries hereinafter set forth. Said chair was unknowingly defective to Plaintiff and said defect was not visible.

8. That Defendants' employee negligently guided Plaintiff and allowed Plaintiff to sit in a defective chair.

9. That the Defendants, WALMART, INC., d/b/a SAM'S CLUB, WALMART STORES, INC. and SAM'S CLUB, owed a duty to the public, and in particular, to the Plaintiff, DENISE PRECHEL, and breached said duties in the following ways, including but not limited to:

- A. Failing to inspect the premises and thereupon remove the dangerous and defective condition herein.

11. That as a further direct and proximate result of the negligence of the Defendants, WALMART, INC., d/b/a SAM'S CLUB, WALMART STORES, INC. and SAM'S CLUB, the Plaintiff, DENISE PRECHEL, has incurred and will incur in the future extensive medical, surgical, hospital and doctor bills.

12. That in the event the Plaintiff was suffering from a pre-existing condition, whether congenital or caused by disease, injury or trauma, then, in that event, the Plaintiff further alleges that the injuries caused by the negligence of the Defendants did aggravate, accelerate and/or precipitate such previous condition, including a latent condition.

13. That Plaintiff is and will be unable to participate in the usual activities of life indulged in prior to said accident.

WHEREFORE, the Plaintiff, DENISE PRECHEL, prays for a Judgment against the Defendants, WALMART, INC., d/b/a SAM'S CLUB, WALMART STORES, INC. and SAM'S CLUB, in whatever amount in excess of Twenty-Five Thousand (\$25,000.00) Dollars, to which Plaintiff is found to be entitled to by the trier of fact, together with costs, interest and attorney fees.

Respectfully submitted,

LAW OFFICES OF LEE B. STEINBERG, P.C.

BY:



FRANCI B. SILVER (P41166)

Attorney for Plaintiff

29777 Telegraph Rd., Suite 1555

Southfield, MI 48034

(248) 352-7777

Dated: August 25, 2021

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF MACOMB

DENISE PRECHEL,

Plaintiff,

vs.

Case No. 21- **03198** -NO
Hon. **JOSEPH TOLA**

WALMART, INC. d/b/a SAM'S CLUB, a Foreign
Profit Corporation, WALMART STORES, INC., a
Foreign Profit Corporation and SAM'S CLUB, a
Foreign Profit Corporation,

Defendants.

FRANCI B. SILVER (P41166)
Lee Steinberg Law Firm
Attorney for Plaintiff
29777 Telegraph Rd., Suite 1555
Southfield, MI 48034
(248) 352-7777 / Fax: (248) 352-6254
franci@leefree.net

RECEIVED
AUG 30 2021
ANTHONY J. TOLA
Macomb County Clerk

DEMAND FOR JURY

NOW COMES the Plaintiff, DENISE PRECHEL, by and through her attorneys, the LAW OFFICES OF LEE B. STEINBERG, P.C., by FRANCI B. SILVER, and respectfully demands a trial by jury pursuant to MCR 2.508(B), in the above matter.

Respectfully submitted,

LAW OFFICES OF LEE B. STEINBERG, P.C.

BY: 

FRANCI B. SILVER (P41166)
Attorney for Plaintiff
29777 Telegraph Rd., Suite 1555
Southfield, MI 48034
(248) 352-7777

Dated: August 25, 2021

***Answer to Complaint
Affirmative Defenses
Reliance on Jury Demand***

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF MACOMB

DENISE PRECHEL,

Plaintiff,

CASE NO.: 21-003198-NO
HON. JOSEPH TOIA

v

WALMART, INC. d/b/a SAM'S CLUB, a Foreign
Profit Corporation, WALMART STORES, INC., a
Foreign Profit Corporation and SAM'S CLUB, a
Foreign Profit Corporation,

Defendants.

FRANCI B. SILVER (P41166)
LEE STEINBERG LAW FIRM
Attorney for Plaintiff
29777 Telegraph Rd., Suite 1555
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AUDREY J. FORBUSH (P41744)
ROCHELLE L. CLARKE (P79054)
PLUNKETT COONEY
Attorneys for Defendants
Plaza One Financial Center
111 E. Court Street - Suite 1B
Flint, MI 48502
(810) 342-7014 - AJF
(810) 342-7020 - RLC
(810) 232-3159 - fax
rclarke@plunkettcooney.com
aforbush@plunkettcooney.com

DEFENDANT'S ANSWER TO PLAINTIFF'S COMPLAINT

NOW COMES Defendant, WALMART, INC., misidentified herein as SAM'S CLUB, and
WALMART STORES, INC., by and through its attorneys, PLUNKETT COONEY, and in Answer
to Plaintiff's Complaint, states as follows:

1. In response to the allegations contained in paragraph 1, Defendants neither admits nor denies the allegations contained therein for lack of sufficient knowledge and leaves Plaintiff to her proofs.

2. In response to the allegations contained in paragraph 2, Defendants do not contest that Walmart, Inc. is duly licensed and authorized to conduct business in the State of Michigan.

3. In response to the allegations contained in paragraph 3, Defendants do not contest that Walmart Stores, Inc is a foreign profit corporation duly licensed and authorized to conduct business in the State of Michigan. Defendants deny the remainder of the allegations contained in the complaint as untrue.

4. In response to the allegations contained in paragraph 4, Defendants deny the allegations contained therein for the reason that same are untrue.

5. In response to the allegations contained in paragraph 5, Defendants neither admits nor denies the allegations contained therein for lack of sufficient knowledge and leaves Plaintiff to her proofs.

6. In response to the allegations contained in paragraph 6, Defendants deny the allegations contained therein for the reason that same are untrue.

7. In response to the allegations contained in paragraph 7, Defendants deny the allegations contained therein for the reason that same are untrue.

8. In response to the allegations contained in paragraph 8, Defendants deny the allegations contained therein for the reason that same are untrue.

9. In response to the allegations contained in paragraph 9, including subparagraph (A), Defendants deny the allegations contained therein for the reason that same are untrue.

10. Paragraph 10 is omitted in Plaintiff's complaint.

11. In response to the allegations contained in paragraph 11, Defendants deny the allegations contained therein for the reason that same are untrue.

12. In response to the allegations contained in paragraph 12, Defendants deny the allegations contained therein for the reason that same are untrue.

13. In response to the allegations contained in paragraph 13, Defendants neither admits nor denies the allegations contained therein for lack of sufficient knowledge and leaves Plaintiff to her proofs.

WHEREFORE, Defendants respectfully request this Honorable Court enter an Order for Judgment of No Cause for Action in its favor, together with costs and attorney fees to be taxed.

Respectfully submitted,

PLUNKETT COONEY

By s/Rochelle L. Clarke
AUDREY J. FORBUSH (P41744)
ROCHELLE L. CLARKE (P79054)
PLUNKETT COONEY
Attorneys for Defendants
Plaza One Financial Center
111 E. Court Street - Suite 1B
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(810) 342-7020 - RLC
(810) 232-3159 - fax
rclarke@plunkettcooney.com
aforbush@plunkettcooney.com

Dated: October 7, 2021

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF MACOMB

DENISE PRECHEL,

Plaintiff,

CASE NO.: 21-003198-NO
HON. JOSEPH TOLA

v

WALMART, INC. d/b/a SAM'S CLUB, a Foreign
Profit Corporation, WALMART STORES, INC., a
Foreign Profit Corporation and SAM'S CLUB, a
Foreign Profit Corporation,

Defendants.

FRANCI B. SILVER (P41166)
LEE STEINBERG LAW FIRM
Attorney for Plaintiff
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(248) 352-6254 - FAX
franci@leefree.net

AUDREY J. FORBUSH (P41744)
ROCHELLE L. CLARKE (P79054)
PLUNKETT COONEY
Attorneys for Defendants
Plaza One Financial Center
111 E. Court Street - Suite 1B
Flint, MI 48502
(810) 342-7014 - AJF
(810) 342-7020 - RLC
(810) 232-3159 - fax
rclarke@plunkettcooney.com
aforbush@plunkettcooney.com

DEFENDANTS' AFFIRMATIVE DEFENSES

NOW COMES Defendants, WALMART, INC., misidentified herein as SAM'S CLUB, and
WALMART STORES, INC., by and through its attorneys, PLUNKETT COONEY, and hereby
asserts the following Affirmative Defenses in the above-entitled cause of action:

1. Plaintiff has failed to state a cause of action upon which relief can be granted.
2. Plaintiff has failed to mitigate her damages.

3. Plaintiff's own actions were the sole, direct and proximate cause of her injury.

4. The sole, direct and proximate cause of Plaintiff's injuries was an independent, intervening act beyond the control of Defendants.

5. Plaintiff's actions were a direct and proximate cause of her injury, and her recovery, if any, should be barred/reduced under the principles of comparative negligence.

6. The alleged defect that is claimed to have caused Plaintiff's injury was open and obvious.

7. Defendants assert all rights and defenses accorded under the statute commonly known as the Tort Reform Act.

8. Defendants are entitled to all relief and set-offs provided by the Tort Reform Act.

9. The sole, direct and proximate cause of Plaintiff's injuries was an independent intervening act beyond the control of Defendants.

10. Defendants had no notice or insufficient notice of the alleged defect.

11. The premise in question was maintained in a reasonably safe condition at all times relative to this action.

12. Defendants complied with the applicable standard of care at all times relevant to this matter.

13. Defendants complied with the applicable statutes, regulations and ordinances at all times relevant to this matter.

14. To the extent Plaintiff seeks recovery from Defendants premised upon damages for medical care, rehabilitation services, or any other economic loss, all or part of which have been paid or are to be paid by a collateral source, Defendants are entitled to have a reduction of that portion of any judgment pursuant to MCLA 600.6303.

15. Defendants assert its right to assert all collateral sources pursuant to MCL 600.6303.

16. Plaintiff's claim is barred in whole or in part by the applicable statute of limitations

17. Defendants reserve the right to add or amend these Affirmative Defenses upon completion of discovery.

Respectfully submitted,

PLUNKETT COONEY

By s/Rochelle L. Clarke
AUDREY J. FORBUSH (P41744)
ROCHELLE L. CLARKE (P79054)
PLUNKETT COONEY
Attorneys for Defendants
Plaza One Financial Center
111 E. Court Street - Suite 1B
Flint, MI 48502
(810) 342-7014 - AJF
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(810) 232-3159 - fax
rclarke@plunkettcooney.com
aforbush@plunkettcooney.com

Dated: October 7, 2021

PROOF OF SERVICE

The undersigned certifies that on the 7th day of October, 2021, a copy of the foregoing document was served upon the attorney(s) of record in this matter at their stated business address as disclosed by the records herein via:

☐ Hand delivery
☐ U.S. Mail
☐ E-Mail

☐ Overnight mail
☐ Facsimile
☒ Electronic e-file

I declare under the penalty of perjury that the foregoing statement is true to the best of my information, knowledge and belief.

Kimberly Webster

Kimberly Webster

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF MACOMB

DENISE PRECHEL,

Plaintiff,

CASE NO.: 21-003198-NO
HON. JOSEPH TOLA

v

WALMART, INC. d/b/a SAM'S CLUB, a Foreign
Profit Corporation, WALMART STORES, INC., a
Foreign Profit Corporation and SAM'S CLUB, a
Foreign Profit Corporation,

Defendants.

FRANCI B. SILVER (P41166)
LEE STEINBERG LAW FIRM
Attorney for Plaintiff
29777 Telegraph Rd., Suite 1555
Southfield, MI 48034
(248) 352-7777
(248) 352-6254 - FAX
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AUDREY J. FORBUSH (P41744)
ROCHELLE L. CLARKE (P79054)
PLUNKETT COONEY
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DEFENDANTS' RELIANCE UPON DEMAND FOR TRIAL BY JURY

NOW COMES Defendants, WALMART, INC., misidentified herein as SAM'S CLUB, and
WALMART STORES, INC., by and through its attorneys, PLUNKETT COONEY, and in Answer
to Plaintiff's Complaint, and hereby rely upon the demand for trial by jury filed by Plaintiff in
the above-entitled cause of action.

Respectfully submitted,

PLUNKETT COONEY

By s/Rochelle L. Clarke

AUDREY J. FORBUSH (P41744)

ROCHELLE L. CLARKE (P79054)

PLUNKETT COONEY

Attorneys for Defendants

Plaza One Financial Center

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Dated: October 7, 2021

PROOF OF SERVICE

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I declare under the penalty of perjury that the foregoing statement is true to the best of my information, knowledge and belief.

Kimberly Webster

Kimberly Webster

Open.13046.14527.27303023-1

Notice of Filing Removal (To State Court)

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF MACOMB

DENISE PRECHEL,

Plaintiff,

CASE NO.: 21-003198-NO
HON. JOSEPH TOLA

v

WALMART, INC. d/b/a SAM'S CLUB, a Foreign
Profit Corporation, WALMART STORES, INC., a
Foreign Profit Corporation and SAM'S CLUB, a
Foreign Profit Corporation,

Defendants.

FRANCI B. SILVER (P41166)
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AUDREY J. FORBUSH (P41744)
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NOTICE OF FILING REMOVAL

**TO: CLERK OF THE COURT
MACOMB COUNTY CIRCUIT COURT
40 NORTH MAIN STREET
MT. CLEMENS, MI 48043**

-and-

**FRANCI B. SILVER, ESQ.
LEE STEINBERG LAW FIRM
29777 Telegraph Rd., Suite 1555
Southfield, MI 48034**

PLEASE TAKE NOTICE that Defendant, WALMART, INC., misidentified herein as SAM'S CLUB, and WALMART STORES, INC., by and through its attorneys, PLUNKETT COONEY this day filed its Notice of Removal of this matter to the United States District Court, with the office of the Clerk of the Court for the United States District Court, Eastern District of Michigan, Southern Division, copies of which are attached hereto.

Respectfully submitted,

PLUNKETT COONEY

By s/Rochelle L. Clarke
AUDREY J. FORBUSH (P41744)
ROCHELLE L. CLARKE (P79054)
PLUNKETT COONEY
Attorneys for Defendants
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Dated: October 8, 2021

PROOF OF SERVICE

KIMBERLY WEBSTER certifies that on the 8th day of October, 2021, she caused to be served a copy DEFENDANT'S NOTICE OF FILING REMOVAL and PROOF OF SERVICE, upon:

FRANCI B. SILVER, ESQ.
LEE STEINBERG LAW FIRM
29777 Telegraph Rd., Suite 1555
Southfield, MI 48034

via electronic filing with Macomb County Circuit Court MiFile and by enclosing same in an envelope properly addressed as above and by depositing same in a United States mail receptacle, with postage thereon fully prepaid.

/s/Kimberly Webster
KIMBERLY WEBSTER

Open.13046.14527.27304838-1